रजिस्ट्री सं० डी०एल०-33004/94 REGISTERED NO. DL-33004/94

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 81] नई दिल्ली, शनिवार, दिसम्बर 31, 1994/पौष 10, 1916
No. 81] NEW DELHI, SATURDAY, DECEMBER 31, 1994/PAUSA 10, 1916

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Separate paging is given to this Part in order that it may be filed as a separate compilation

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MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 31st December, 1994/Pausa 10, 1916 (Saka)

THE PATENTS (AMENDMENT) ORDINANCE, 1994

No. 13 OF 1994

Promulgated by the President in the Forty-fifth Year of the Republic of India.

An Ordinance further to amend the Patent Act, 1970.

WHEREAS India is a signatory to the agreement for the establishment of the World Trade Organisation including the Agreement on Trade Related Aspects of Intellectual Property Rights for the purpose of reduction of distortions and impediments to international trade and promotion of effective and adequate protection of intellectual property rights.

AND WHEREAS with a view to meeting India's obligations under the said Agreement while safeguarding its interests, it has become necessary to amend the Patents Act, 1970 in conformity with the obligations under the Agreement that signatory countries, in formulating or amending their laws and regulations, may adopt measures consistent with the said agreement, necessary to protect public health and nutrition and to promote public interest in sectors of vital importance to their socio-economic and technological development;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (*1*) This Ordinance may be called the Patents (Amendment) Ordinance, 1994.

(*2*) It shall come into force on the 1st day of January, 1995.

Amendment of section 5.

2. Section 5 of the Patents Act, 1970 (hereinafter referred to as the Principal Act) shall be re-numbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:— 39 of 1970.

"(*2*) Notwithstanding anything contained in sub-section (*1*), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.".

Insertion of new Chapter IVA.

3. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IVA

EXCLUSIVE MARKETING RIGHTS

Application for grant of exclusive rights.

24A. (*1*) Notwithstanding anything contained in sub-section (*1*) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (*2*) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(*2*) Where the Controller, on receipt of a report under sub-section (*1*) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(*3*) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (*1*) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24B.

Grant of exclusive rights.

24B. (*1*) Where a claim for patent covered under sub-section (*2*) of section 5 has been made and the applicant has,—

(*a*) where an invention has been made in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent on the basis of appropriate tests conducted in that country has been granted on or after the date of making a claim for patent covered under sub-section (*2*) of section 5; or

(*b*) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted the patent therefor on or after the date of making a claim for patent covered under sub-section (*2*) of section 5,

and has received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(*2*) Where, the specifications of an invention relatable to an article or a substance covered under sub-section (*2*) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infrigement of exclusive right to sell or distribute under sub-section (*1*):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to selling or distributing the same, the details of invention relatable thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

Compulsory licences.

24C. The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:—

(*a*) throughout Chapter XVI, working of the invention shall be deemed to be selling or distributing the article or substance;

(*b*) three years from the date of sealing of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B;

(*c*) the time which has elapsed since the sealing of the patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute under section 24B;

(*d*) clause (*d*) and clause (*e*) of section 90 shall be omitted;

Special provision for selling or distribution.

24D. (*1*) Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (*1*) of section 24B, the Central Government is satisfied that it is necessary or expedient in the public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (*1*) of section 24B, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

(*2*) The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authourity specified by it in this behalf.

Suits relating to infringements.

24E. All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as if they are suits concerning infringement of patents under Chapter XVIII.

Central Government and its officers not to be liable.

24F. The examination and investigations required under this Chapter shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.".

Omission of section 39.

4. Section 39 of the principal Act shall be omitted.

Amendment of section 40.

5. In section 40 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of section 64.

6. In section 64 of the principal Act, in sub-section (*1*), in clause (*n*), the words and figures "or made or caused to be made an application for

the grant of a patent outside India in contravention of section 39" shall be omitted

7. In section 118 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be omitted. Amendment of section 118.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA
Secy. to the Govt. of India.

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AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS DELHI 1994